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## **DEPARTMENT OF STATE**

22 CFR Part 42

**RIN:** 1400-AC86

[Public Notice: 7391]

### **Visas: Documentation of Immigrants Under the Immigration and Nationality Act, as Amended**

**AGENCY:** State Department.

**ACTION:** Interim final rule.

**SUMMARY:** This rule amends the Department of State's regulations relating to adoptions in countries party to The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption, to include new adoption provisions from the International Adoption Simplification Act. This legislation provides for sibling adoption to include certain children who are under the age of 18 at the time the petition is filed on their behalf, and also certain children who attained the age of 18 on or after April 1, 2008 and who are the beneficiaries of a petition filed on or before November 30, 2012.

**DATES:**

*Effective Date:* This rule is effective [insert date of publication in the Federal Register].

*Comment Date:* The Department will accept comments from the public up to [insert date 30 days after date of publication in the Federal Register].

**ADDRESSES:**

You may submit comments by any of the following methods:

- E-mail: BeaumontTW@state.gov (Subject line must read IASA Sibling Reg.).
- Mail: Chief, Legislation and Regulation Division, Visa Services—IASA Sibling Reg., 2401 E. Street, N.W., Washington DC 20520-30106.
- “Persons with access to the Internet may view this notice and provide comments by going to the regulations.gov website at:  
<http://www.regulations.gov/index.cfm>, and searching on the Public Notice number 7391.”

**FOR FURTHER INFORMATION CONTACT:** Taylor W. Beaumont, Legislation and Regulations Division, Visa Services, Department of State, 2401 E Street, N.W., Room L-603D, Washington, DC 20520-0106, who may be reached at (202) 663-1202.

**SUPPLEMENTARY INFORMATION:**

*Definitions*

As used in this public notice, the term “Convention” means The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption; the term “Convention country” means a country that is a party to the Convention and with which the Convention is in force for the United States; and the term “IASA” means the International Adoption Simplification Act, Pub. L. 111-287 (2010).

*Why is the Department promulgating this rule?*

On November 30, 2010, the President signed the IASA into law, modifying the Immigration and Nationality Act (INA) as regards adoptions from Convention countries. Among other changes, the IASA creates a new INA Section 101(b)(1)(G)(iii) to allow U.S. citizens to file an immediate relative petition for a child younger than 18 from a Convention country, provided that child is the natural sibling of a child concurrently or already adopted or being brought to the United States for adoption under INA Sections 101(b)(1)(E)(i), (F)(i), or (G)(i). To qualify as a child who is covered under INA Section 101(b)(1)(G)(iii), a child must be adopted abroad, or be coming to the United States for adoption, by the adoptive parent(s) or prospective adoptive parent(s) of his/her natural sibling. In addition, the child must be otherwise qualified as a Convention adoptee under INA Section 101(b)(1)(G)(i), except that the child is under 18 years of

age rather than under 16 years of age, as is required for classification under INA Section 101(b)(1)(G)(i).

The IASA contains an exception at Section 4(b) necessitating a modification of the Department regulation contained in 22 CFR 42.24.

Under that section, an alien who is older than 18 years of age nonetheless may be classified under INA Section 101(b)(1)(G)(iii) if he/she turned 18 years of age on or after April 1, 2008 and his/her immediate relative petition is filed not later than November 30, 2012. As currently written, the Department's regulations pertaining to INA Section 101(b)(1)(G) cover exclusively those children whose adoptions will be governed by the Convention. Although aliens qualified under IASA Section 4(b) will be emigrating from a Convention country, the Convention only governs the adoption of children under the age of 18. This rule is necessary to change Department regulations to cover aliens properly qualified under IASA Section 4(b).

## **REGULATORY FINDINGS**

### *Administrative Procedure Act*

The Department is publishing this rule as an **interim final rule**, and with an effective date less than 30 days from the date of publication, based on the “**good cause**” exceptions set forth at 5 U.S.C. §§ 553(b) and

553(d)(3). Delaying implementation of this rule would be contrary to the public interest, due to the effect of recent legislation (the International Adoption Simplification Act). Because current Department regulations do not contemplate the adoption of children over the age of 18 in countries party to The Hague Convention on Inter-Country Adoption, the lack of procedural certainty regarding 22 CFR 42.24 could foreseeably cause undue confusion and delay for American citizens pursuing their rights to adopt as provided by the IASA. The Department will accept public comments for 30 days after publication.

*Regulatory Flexibility Act/Executive Order 13272: Small Business.*

The Department of State has reviewed this regulation and certifies that this rule will not have a significant economic impact on a substantial number of small entities. The Department of State notes that this regulation, as it exclusively facilitates adoptions by U.S. citizens, will have its greatest effect on individuals and not small businesses. While American Adoption Service Providers (ASPs) are essential to intercountry adoptions in Convention countries, this regulation will have a negligible effect on these ASPs, as the Department of State anticipates that this regulation will allow very few adoptions that would not have already been possible in the absence of this regulation.

### *The Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4, 109 Stat. 48, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

### *The Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

### *Executive Order 12866*

The Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has reviewed

this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866. Consistent with Executive Order 12866, the Department does not consider the rule to be an economically significant action within the scope of section 3(f)(1) of the Executive Order since it is not likely to have an annual effect on the economy of \$100 million or more or to adversely affect in a material way the economy, a sector of the economy, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities.

*Executive Order 13563*

The Department of State has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

*Executive Orders 12372 and 13132: Federalism*

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

*Executive Order 13175*

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirement of Section 5 of Executive Order 13175 does not apply to this rulemaking.

*Paperwork Reduction Act*

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

**List of Subjects in 22 CFR Part 42**

Immigration, Passports and Visas

Accordingly, for the reasons set forth in the preamble, 22 CFR Part 42 is amended as follows:

**PART 42—[AMENDED]**

1. The authority citation for part 42 continues to read as follows:

**Authority:** 8 U.S.C. 1104 and 1182; Pub. L. 105–277; Pub. L. 108–449; 112 Stat. 2681–795 through 2681–801; The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at the Hague, May 29, 1993), S. Treaty Doc. 105–51 (1998), 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); The Intercountry Adoption Act of 2000, 42 U.S.C. 14901–14954, Pub. L. 106–279.



2. Section 42.24 is amended by revising paragraph (a) and adding paragraph (n) to read as follows:

**§ 42.24 Adoption under the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption and the Intercountry Adoption Act of 2000.**

(a) Except as described in paragraph (n), for purposes of this section, the definitions in 22 CFR 96.2 apply.

\* \* \* \* \*

(n) Notwithstanding paragraphs (d) through (m) of this section, an alien described in paragraph (n)(1) of this section may qualify for visa status under INA section 101(b)(1)(G)(iii) without meeting the requirements set forth in paragraphs (d) through (m) of this section.

(1) Per Section 4(b) of the Intercountry Adoption Simplification Act, Pub. L. 111-287 (IASA), an alien otherwise described in INA section 101(b)(1)(G)(iii) who attained the age of 18 on or after April 1, 2008 shall be deemed to meet the age requirement imposed by INA section 101(b)(1)(G)(iii)(III), provided that a petition is filed for such child in accordance with DHS requirements not later than November 30, 2012.

(2) For any alien described in paragraph (n)(1) of this section, the “competent authority” referred to in INA section 101(b)(1)(G)(i)(V)(aa) is the passport issuing authority of the country of origin.

October 21, 2011

(Date)

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Janice L. Jacobs,  
Assistant Secretary for  
Consular Affairs,  
Department of State.

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